

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AKBAR SHABAZZ,

Defendant-Appellant.

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UNPUBLISHED

January 26, 2001

No. 216356

Wayne Circuit Court

LC No. 97-008582

Before: Markey, P.J., and Whitbeck and Martlew\*, JJ.

MEMORANDUM.

Defendant was convicted by a jury of reckless or wanton use of a firearm, MCL 752.a863; MSA 28.436(24), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He appeals by right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that insufficient evidence was presented to support his felony-firearm conviction, given that the jury acquitted him of the underlying felony charge of felonious assault and instead convicted him of the misdemeanor offense of reckless or wanton use of a firearm. We find no merit to this argument.

Although an element of the offense of felony-firearm is the commission or attempted commission of a felony, the defendant need not be *convicted* of a felony or the attempt to commit a felony in order to be convicted of felony-firearm. *People v Lewis*, 415 Mich 443, 454-455; 330 NW2d 16 (1982). A jury's decision to convict a defendant of felony-firearm may be construed as an implicit finding that the defendant committed or attempted to commit the underlying felony. *Id.* at 452. "If a conviction for felony-firearm is allowed to stand in the event that defendant is acquitted on the underlying felony, then the result should be the same in the event that the jury convicts a defendant of a lesser-included offense, which happens to be a misdemeanor." *People v Bonham*, 182 Mich App 130, 136; 451 NW2d 530 (1989).

Viewing the evidence in a light most favorable to the prosecution, sufficient evidence was

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\* Circuit judge, sitting on the Court of Appeals by assignment.

presented to allow a rational trier of fact to find that the essential elements of the felony-firearm charge, including defendant's commission or attempted commission of a felony, were proved beyond a reasonable doubt. *People v Davis*, 216 Mich App 47, 52-54; 549 NW2d 1 (1996). Under the circumstances of this case, including the expert witness testimony regarding defendant's psychiatric history, it is reasonable to assume that the jury acquitted defendant of the underlying felonious assault charge on grounds of leniency or mercy, rather than innocence. *Lewis, supra* at 450-451. The jury's verdicts are neither logically nor legally inconsistent.

We affirm.

/s/ Jane E. Markey  
/s/ William C. Whitbeck  
/s/ Jeffrey L. Martlew